91-1585

Supreme Court, U.S.
FILED
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

PETITIONERS,

vs.

PEOPLES LIBERTY BANK (AKA STAR BANK OF KENTON COUNTY, INC.), RALPH HAILE, RICHARD NELSON, RICHARD SLUKICH, CITY OF COVINGTON, DENNY BOWMAN, JOSEPH CONDIT, TERRY HUGHES, DANIEL ZALLA, JOHN ELFERS,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

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QUESTIONS PRESENTED

(1) Whether an action, brought in Kentucky seeking monetary damages from the defendants for an alleged racially-based conspiracy against plaintiffs, which included foreclosing on three parcels of real property, beating and jailing of plaintiff, pursuant to Civil Rights Statutes (42 USC §§ 1982, 1983, etc.) is subject to Kentucky's one year Statute of Limitations for an action for an injury to the person of the plaintiff? (KRS 413.140(1)(a)).

Or, alternatively, in an illegal foreclosure action where mortgagee and its attorney hires City police officers and their attorney to forcibly take real property from (plaintiffs) mortgagors, but mortgagors (plaintiffs) win on appeal in the possessory action; is mortgagors' (plaintiffs') Civil Rights action for damages subject to Kentucky's one year statute of limitation for an action for an injury to the person of the plaintiff? (KRS 413.140(1)(a))?

(2) Under Kentucky law, must a defendant plead a statute of limitations, in an action based upon a mortgage, which is a contract, in order to benefit from application of the statute?

(3) Based upon the uncontroverted facts in the record, is Petitioner entitled to summary judgment, as a matter of law?

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PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

Petitioners, Patricia and Eddie Thompson, Jr., (hereinafter Petitioners) respectfully pray that a Writ of Certiorari issue to review the Judgment of United States Court of Appeals entered on August 5, 1991, and Annexed as Appendix Page 3a (hereinafter App. P 3a) Petition for rehearing denied on January 6, 1992. (App. P 1a). Petition to recall mandate denied March 3, 1992. (App. P 5a).

OPINION BELOW

On December 18, 1990, the District Court entered its opinion, order and judgment, sua sponte dismissing petitioner's complaint, as barred by Kentucky statute of limitation (K.R.S. 413.140(1)(a). (NR 42, 43, App. P 6a, 9a)

On March 4, 1991, the District Court entered an order:

> (1) deny(ing) motion of petitioners' to vacate judgment of December 18, 1990; (2) deny(ing) petitioners' motion to strike, defendants' motions to dismiss, as insufficient as a matter of law; (3) denying petitioners' motion to take judicial notice of prior pretrial conferences and proceedings; (4) deny(ing) petitioners' motion to make finding of facts; (5) deny(ing) petitioners' motion for a hearing; (6) deny(ing) petitioners' motion to compel Zalla to answer interrogatories. (NR 60, App. P 10a).

On June 6, 1991, the District Court: (1) denied petitioners' motion for sanction aganst defendants pursuant to Rule 11 and 37c; (2) rejected petitioners' statement of evidence and/or proceedings; (3) granted defendants, Slukich and Zalla's motion for sanctions and attorney fees in part and taken under submission in part. (NR 85, App. P 11a)

JURISDICTION

Jurisdiction of the District Court was invoked pursuant to 28 USC § 1343, 42 USC § 1982, and 42 USC § 1983. The Sixth Circuit had jurisdiction pursuant to 28 USC § 1291. Jurisdiction is invoked here, pursuant to 28 USC § 1254(1), (2).

Decisions of this Court sustaining jurisdiction:

Carter v. *Stanton*, 405 US 669, 31 L Ed 569, 92 S Ct 1232 (1972)

Celotex Corp. v. *Catreet*, 417 US. 317, 91 L Ed 2d 265, 106 S Ct 2540 (1986)

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Wilson v. *Garcia*, 471 US 261, 85 L Ed 254, 105 S Ct 1938 (1985)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

FIRST AMENDMENT — Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIFTH AMENDMENT — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time

of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT, section 1 — All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

28 USC 1343 — The District Court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any deprive or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42 [42 USCS § 1985];

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrong mentioned in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State Law, Statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of

Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 USC § 1982 — All citizens of the United States shall have the same rights, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

42 USC § 1983 — Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof or the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

FEDERAL RULES

FRCP, Rule 8(b) — A party shall state in short and plain terms his defense to each claim asserted and shall admit or deny the averment upon which the adverse party relies. If he is without knowledge, he shall so state and this has the effect of a denial. Denial shall fairly meet the substance of averments denied . . .

FRCP, Rule 8(c) — In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption and risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration,

fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of fraud, statute of limitations and any other matter constituting an avoidance or affirmative defense . . .

FRCP, Rule 8(d) — Avermants in a pleading to which a responsive pleading is required, other than the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsible pleading is required or permitted shall be taken as denied or void.

FRCP, Rule 12(a) — A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him . . .

FRCP, Rule 12(b) — Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except tht the following defenses may at the option of the pleader, be made by motion:

(6) failure to state a claim upon which relief can be granted,

If, on a motion asserting the defense number (6) to dismiss for failure of pleading to state a claim upon which relief can be granted, matter outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

FRCP, Rule 12(c) — After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded

by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

FRCP, Rule 12(d) — The defenses specially enumerated (1)-(7) in subdivision (b) of this rule, whether made in pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

FRCP, Rule 12(f) — Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the Court may order striken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

FRCP, Rule 36(a) — A party may serve upon any other party a written request for the admission, for the purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of facts or of the application of law to fact, including the genuineness of any documents described in the request . . . Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request . . .

FRCP, Rule 36(b) — Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission.

FRCP, Rule 56(c) — The motion shall be served at least 10 days before the time fixed for a hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, dispositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

FR Evid., Rule 201(d) — A Court shall take judicial notice if requested by a party and supplied with the necessary information.

Rule 201(e) — A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter notice. In the absence of prior notification, the request may be made after judicial notice has been taken.

Rule 201(f) — Judicial notice may be taken at any stage of the proceeding.

JOINT LOCAL RULES

LR 6(a) — Motions. All motions shall state precisely the relief requested. Except for routine motions, such as for extensions of time, each motion shall be accompanied by supporting memorandum which complies with the provisions of this RULE. Failure to do so may be grounds for denying the motion.

LR 6(b)(1)(A) — Opposing Memorandum. An opposing memorandum must be filed within fifteen (15) days from the date of the service of the motion which may be extended for no more than thirty (30) ad-

ditonal days by written stipulation filed with the Court unless the stipulation would extend the time beyond a deadline established by the Court. Failure to file an opposing memorandum may be grounds for granting the motion.

LR 6(e) — Hearings on Motions. A party may request a hearing on a motion by filing a motion for oral arguments which set forth the reasons why counsel believes that argument may assist the Court in ruling on the motion. If a hearing is not requested, or if requested but not granted, a motion shall be submitted to the Court for decision after the reply memorandum is filed, or the time for filing such a memorandum has expired.

KENTUCKY STATUTES

KRS 413.010 — An action or recovery of real property may be brought only within fifteen years after the right to institute it first accrued to plaintiff, or the person through whom he claims.

KRS 413.070 — After a mortgagee of real property or any person claiming under him had fifteen (15) years' continued adverse possession, no action shall be brought by the mortgagor or anyone claiming under him to redeem the property.

KRS 413.120 — The following action shall be commenced within (5) years after the cause of action accrued: (6) An action for an injury to the rights of plaintiff, not arising on contract and not otherwise enumerated.

KRS 413.140(1) — The following action shall be commenced within one (1) year after the cause of action accrued: (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice or servant. Baldwin Annotated (1990)

STATEMENT OF THE CASE

In summary, petitioner (appellants-plaintiffs) have alleged, inter alia, that because they were negroes, (appellees-defendants) Peoples Liberty Bank, its officers and/or agents, the City of Covington, several of its officials (including police officers), Mr. Richard Slukich, attorney for police officers, Mr. John Elfers, Kenton County Attorney, and Mr. Daniel Zalla, an attorney, conspired against them (petitioners) on the basis of their race to forcibly take and detain three (3) parcels of real property which petitioners legally owned, including petitioners' home.[1] (NR 1, App. P. 15a)

After failing to obtain a decision on the merits in prior suits in Federal and State Court[1], petitioners filed the instant action on September 14, 1990; seeking money damages to compensate them for the deprivation of their civil rights guaranteed by the 5th, 13th and 14th Amendments to the U.S. Constitution. Petitioners also sought a trial by jury. (Seventh Amendment, U.S. Constitution) (NR 1)

On November 16, 1990, Petitioner served interrogatories[2] upon Mr. Daniel Zalla. (NR 47)

Prior to December 17, 1990, Defendants and/or their counsel; (1) filed motions for extensions of time[3] to answer, (2) various pleadings and pretrial motions to dismiss[4], on the grounds that the applicable statute of limitations bar the complaint and further the complaint was barred by application of

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[1] The judgment dismissing, with prejudice Peoples Liberty Bank's motion for forcible detainer (*Peoples Liberty Bank* v. *Thompson*, 79-1456-MR, KY CA 1980) had the effect of judgment for palintiff, thereby prejudicing Peoples Liberty Bank's and those claiming title under Peoples Liberty Bank, including defendant Slukich.

[2] Defendant Zalla failed to answer interrogatories.

[3] Motion for Extension of Time was in violation of LR 6(a)(1).

[4] Defendants pleaded no applicable statute of limitations and the City of Covington was in default.

the doctrine of res judicata, and (3) motion for judgment on the pleadings. (NR 6, 26, 27, 32, 38, 39, 40[5], 41.a)

On December 17, 1990, Counsel for Slukich filed a clarification of Slukich's motion to dismiss. (NR 41.a)

On December 17, 1990, petitioners filed a motion to strike[6] defendants' pleadings and/or motions to dismiss as insufficient as a matter of law. (NR 41.b)

On December 18, 1990, contra to Fed. R. Civ. P. Rules 8(b), (c), (d), (e), 12(c), (d), (f), and Local Rules 6(b)(1)(A), 6 (b)(1)(B) 6(e), the District Court, sua sponte, (1) denied petitioners' uncontested motion to strike[7] defendants' (respondents) motions to dismiss and/or pleadings, as insufficient as a matter of law, and (2) granted defendants' motions to dismiss with prejudice, petitioners' claims, as barred by

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[5] On November 30, 1990 (NR 40), Mr. Wolnitzek, Counsel for defendant, Slukich, took the lead in this matter and filed a fifteen (15) page motion to dismiss. Mr Wolnitzek pleaded no facts to support his claims that the case was barred by Kentucky statute of limitation or barred by the doctrines of res judicata and collateral estoppel. Mr. Wolnitzek concluded, "(petitioners) are attempting to litigate in this Court the same claim that has once before been litigated here and in the Kenton Circuit Court . . . It absolutely must be stopped. Now, applying the doctrines of res judicata and collateral estoppel, it can be stopped. In addition, the claims are all tort actions which are subject to, and barred by, the Kentucky statutes of limitations."

[6] Petitioners filed a response, (motion to strike NR 41. b) pointing out that: (1) petitioners were the present owners of the real property, based upon a State Court judgment[1], (2) defendants did not plead any statute of limitation, (FRCP R. 8(c) and LR 8(a) and were estopped from claiming the fifteen (15) year statute of limitations wasn't applicable as a result of prior litigation between the parties, (3) defendants were not proceeding in good faith, (4) The City of Covington was in default, and (5) these misrepresentations made in spite of the fact that defendant, Slukich was claiming under Peoples Liberty Bank, who was estopped from pleading the action was barred by one year statute of limitation.

[7] The motion was in fact a motion for judgment on the pleadings and/or summary judgment. See *Lehmann Trading* v. *J. H. Stolow, Inc.*, 184 F Supp 21. No defendants filed a response.

Kentucky's one-year statute of limitations. (KRS 413.140 (1)(a). (NR 42, 43, App. P. 6a, 9a).

On December 28, 1990, petitioner filed a motion to: (1) Vacate Judgment of December 18, 1990, (2) Grant plaintiff's motion to strike, (3) Take judicial notice of prior pretrial conference and proceedings, and (4) Make findings of facts. (NR 44)

On January 4, 1991, petitioner moved the District Court for a hearing[8] on pending motions. (NR 45)

On February 7, 1991, (NR 61), February 12, 1991, (NR 65, 66), February 15, 1991, (NR 62, 63, 64), petitioners served Request for Admissions[9] upon Mr. Slukich, Mr. Condit, Mr. Elfers, Mr. Bryson, Mr. Haile, and the City of Covington, respectively.

On March 4, 1991, the District Court entered an order denying petitioners' (1) motion to vacate judgment of December 18, 1990, (2) motion to strike, defendant motion to dismiss, as insufficient, as a matter of law, (3) motion to take judicial notice of prior pretrial conference and proceedings, (4) motion to make finding of facts, (5) motion for a hearing, (6) motion to compel Zalla to answer interrogatories. (NR 60, App. P. 10a)

On March 14, 1991, petitioners filed a motion for reconsideration of the Court's order of March 4, 1991 and sanction[10] against defendants. See CR 11 and 37. (NR 67)

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[8] Purpose of hearing was to ensure due process and equal protection of the law. 5th and 14th Amendments, U.S. Constitution and Fed. R. Evid. Rule 201(e).

[9] All defendants failed to answer the request for admissions or set forth reasons why they could not admit or deny, thereby judicially admitting facts and law stated in requests for admissions.

[10] Petitioners informed the District Court of misrepresentations of fact and law by counsel for defendants by affidavit. The failure of the District Court to take judicial notice of facts on the record and hold a hearing, in ef-

On March 19, 1991, the Court denied motion for reconsideration of its order of March 4, 1991. (NR 68)

On April 1, 1991, petitioners filed a notice of appeal. (NR 24)

On April 9, 1991, pursuant to F.R.A.P. 10(c), petitioner filed a statement[10] of evidence and/or proceeding to show how the questions for appeal arose, as there was no hearing or transcript of evidence available. (NR 25)

On June 6, 1991, the Court entered an order (NR 85, App. P. 11a); (1) denying (petitioners) motion for sanctions against defendants, (2) rejecting (petitioners) Statement of Evidence and/or Proceedings. (F.R.A.P. Rule 10(c), (3) granting Slukich and Zalla's motion for sanctions, attorney's fees and a permanent injunction in part and taken under submission in part, as follows: A. (Petitioners) appear to be sincere in (their) belief that the law affords him relief for his unsuccessful real estate transactions in the 1970's. However, he has fully litigated these issues and is draining the resources of the Court and the parties named as defendants, who have not attempted to collect, perhaps out of fear of further protracting the litigation.[11]

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fect amounts to judicial enforcement of defendant's forcible taking and detaining of petitioners' real and personal property, becuse of petitioners' race, contrary to the U.S. Constitution and public policy as envisioned by this Court.

[11] The District Court made no findings of fact[12] that (1) petitioners had fully litigated any issues, (2) petitioners are draining the resources of the Court and/or defendants, or that the Court had previously awarded attorney's fees to defendants, who had not attempted to collect, perhaps out of fear of further protracting litigation.

STATEMENT OF FACTS

The facts of this case are not in dispute. The record, i.e. (a) verified pleadings, (NR 1, App. P. 15a) (b) prior pretrial conference and proceedings annexed to motion to vacate filed December 28, 1990, (NR 44) (c) admissions of defendants on file, (NR 61, 62, 63, 64, 65, 66) (d) interrogatories (NR 47), (e) affidavit of plaintiff, annexed to motion for sanctions, (NR 67) and (f) the unpublished Order of Court of Appeals affirming, (App. P. 3a) all show facially that: (1) the conduct at issue was under color of law; (2) the conduct caused a deprivation of constitutional rights; (3) the deprivation occurred without due process or equal protection of the law; (4) there was no genuine issue as to any material fact. There is no denial of these facts on the record. Under these circumstances, petitioner is entitled to a summary judgment as a matter of law.

This case inolves no elements of personal injuries that could be appropriately classified under KRS 413.140(1)(a)[14]. To the contrary, defendants have judicially admitted that this is an action[15] to enforce petitioner's Constitutional and Statutory Rights that were denied when defendants acknowledged a

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[12] The District Court's order is riddled with contradictions[13] stating, inter alia, that: (4) "(petitioner) appears to be sincere in his belief that the law affords him relief for unsuccessful real estate transactions in the 1970's. However, he has fully litigated these issues . . . Accordingly, the Court orders that plaintiff may not file any further or new actions dealing with the issues raised in (this action)."

[13] Once the District Court concluded petitioner's "federal rights had been invaded" and petitioner had fully litigated issues"); Court was required to fashion a remedy, so as to grant petitioner the necessary relief, as it is well settled: "Where federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief." *Bivens*, *supra*, 403 US 388, 392.

[14] An action for an injury to the person of the plaintiff, or of her husband, his wife, ward, apprentice or servant.

[15] Governed by the fifteen year statute.

racially motivated conspiracy to falsely arrest and imprison petitioner (Eddie) in the forcible taking and criminal conversion of petitioner's home, and other, real and personal property. KRS 413.010, 413.070.

Collard, supra, was not a Civil Rights case, as no action was taken under color of law.

In briefs to the Sixth Circuit, counsels for the defendants, (1) admitted all allegations of the complaint, misrepresented fact and law of the case to that Court and waived oral argument[16], so as to conceal, delay and/or evade the issues before that Court.

The Court of Appeals' decision affirming is clearly erroneous. The failure to review the case de novo is plain error, resulting in a denial of liberty and property, without due process or equal protection of the law, in contravention of Fifth and Fourteenth Amendments, U.S. Constitution. The decision also effectively denied petitioner's Constitutional Right to petition the government for a redress of grievance as guaranteed by the First Amendment, U.S. Constitution.

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[16] Since counsel for defendants had not argued, that KRS 413.140(1)(a) was the applicable state statute of limitations or that *Collard, supra*, was applicable to the facts of this case, in the Sixth Circuit or the District Court, they could not make that argument here.

REASONS FOR GRANTING THE WRIT

Judicial enforcement of "an alleged racially-based conspiracy against (petitioners) which included foreclosing on three parcels of real estate in 1976 and the 1978 beating and jailing of (petitioner)[17] is contrary to the public policy of the United States[18], 42 USC 1982, 1983, 1985, and the U.S. Constitution, First, Fifth, and Fourteenth Amendments. See *Hurd* v. *Hodge*, 334 US 24, 92 L Ed 1187 (1947).

From the undisputed facts on the face of the record, it is clear that Peoples Liberty Bank, its officers and/or agents, the City of Covington and its officers and/or agents made a conscientious racially motivated decision to permit Peoples Liberty Bank, its officers and/or agents to hire Covington Police Officers to frocibly take petitioners' home[1] and other real or personal property.

It is well settled that:

> where federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief. *Bell* v. *Hood*, 327 US 678, 684 (1946)

When legal and equitable claims are joined in the same action, "the right to a jury trial on the legal claim, including all issues common to both claims, remain intact." *Lytle* v. *Household Manufacturing*, 108 L Ed 2d 504 (1990)

While the U.S. Supreme Court ordinarily defers to lower Court's construction of state's statutes[19] it does not invariably

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[17] See facts in Court of Appeals decision, App. P. 3a, 4a.

[18] Kentucky is included in the phrase "every state and territory" found in the provisions of Revised Statutes § 1982 that, "all citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, sell, lease, hold and convey real and personal property."

[19] Traditionally, under Kentucky Statutory law (KRS 413.140), action for injuries to the person referred to those cases where the personal injury,

do so, particularly when the lower Courts have fallen into plain error. *Frisby* v. *Schultz*, 487 US 474

Federal Courts of Appeals are required to review de novo, Federal District Courts' determination of state law. *Salve Regina College* v. *Russell*, 113 L Ed 2d 190, 198

> Independent appellate review of legal issues best serve the dual goal of doctrinal cohorence and economy of judicial administration . . . As questions of law become the focus of appellate review, it can be expected that the parties' briefs will be refined to bring to bear on the legal issues more information and more comprehensive analysis than was provided for the District Judge . . . Independent appellate review necessarily entails a careful consideration of the District Court's legal analysis, and an efficient and sensitive Appellate Court at least will naturally consider this analysis in undertaking its review, . . . Any expertise possessed by the District Court will inform the structure and content of its conclusions of law and thereby become evident to the reviewing Court. If the Court of Appeals finds that the District Court's analytical sophistication and research have exhausted the State-Law inquiry, little more need be said in the appellate opinion. Independent review, however, does

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such as assault and battery, physical injuries to the body and the like, is the gist of the action. *Restlawn Memorial Cemetery* v. *Volk*, 150 S.W. 2d 908 (KY CA 1941). Also see *Troxell* v. *Trammell*, 730 S.W. 2d 525 (KY SC 1987). In 1984, the Kentucky Supreme Court concluded that Kentucky should recognize the tort of intentional infliction of emotional distress and that the applicable limitations should be five years as provided in section 413.120(6)[20]. *Craft* v. *Rice*, 671 S.W. 2d 247 (1987).

[20] An action for an injury to the rights of the plaintiff, not arising on a contract and not otherwise enumerated[21], is five (5) years. KRS 413.120(6).

[21] An action for damages for wrongfully withholding real property from the lawful owner is governed by K.R.S. 413.010 and/or 413.070 and is fifteen (15) years.

not admit of unreflective reliance on a lower Court's inarticulable intuitions. Thus, an appropriately respectful application of de novo review should encourage a District Court to explicate with the basis for its legal conclusions. See FRCP Rule 52(a) ("requiring the District Court to state separately its conclusions of law.") . . . In addition, it is "especially common" for issues involving supervision of litigation to be reviewed for abuse of discretion. See *Pierce* v. *Underwood*, 487 US 552, 558, n. 1 . . . ("The District Court is better situated than the Court of Appeals to marshall the pertinent facts and apply the fact-dependent legal standard mandated by Rule 11") *Pierce*, *supra* at 562 . . . Nothing about the exercise of (Federal) jurisdiction alters these functional components of decisionmaking or otherwise warrants departure from a rule of independent appellate review. Actually, appellate deference to the District Court's determination of State Law is inconsistent with the principles underlying this Court's decision in *Erie*. The twin aims of the *Erie* Doctrine — "discouragement of forum-shopping and avoidance of inequitable administration of the laws." *Hanna* v. *Plumer*, 386 US 460, 468, — are components of the goal of doctrinal coherence advanced by independent appellate review . . . Moreover, by denying access to meaningful review of State-Law claims, appellate courts that defer to the District Courts' State-Law determinations create a dual system of enforcement of State-Created rights, in which the substantive rule applied to a dispute may depend on the choice of forum. *Id.* at 199. Cf. *Erie*, 304 US, at 74-75, 82 S Ct 817, ("[The rule of *Swift* v. *Tyson*, 16 Pet 1, 10 L Ed 865 (1842)] made rights enjoyed under the unwritten 'general law' vary according to whether enforcement was sought in the State or in the Federal Court"). Neither of these results, unavoidable in the absence of independent appellate review, can be reconciled to the commands of

> *Erie.* [In *Bernhardt* v. *Polygraphic Co.*, 350 US 198, this Court remanded the case to the District Court for application of State Law. (This) Court noted, however that the law of the State was firmly settled, and emphasized: "Were the question in doubt or deserving of further convass, we would of course remand to the Court of Appeals to pass on this question of (State) Law." *Id.*, at 205,] . . . 113 L Ed 2d 200. When de novo review is compelled, no form of appellate deference is acceptable. *Id.*, at 202

It is well settled: To sustain a § 1983 claim[22]. plaintiff need only to show[23]; (1) the conduct at issue was under color of law; (2) the conduct caused a deprivation of constitutional

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[22] In essence, § 1983 creates a cause of action where there has been injury, under color of state law, to the person or to the constitutional or federal statutory rights which emanate from or are guaranteed to the person. In the broad sense, every cause of action under § 1983 which is well-founded results from 'personal injury.' *Wilson* v. *Garcia*, 471 US 261, 278, 85 L Ed 2d 254, 105 S Ct 1938 (1985). In *Wilson* this Court concluded, based upon the legislative history of § 1983 and the wide array of claims now embraced by that provision, that § 1983 "confer(s) a general remedy for injuries to personal rights. Because § 1983 claims are best characterized as personal injury actions, the Court of Appeals correctly applied the . . . statute of limitations governing actions "for an injury to the person or reputation of any person."

[23] Petitioner[24] claims jurisdiction under 5th and 14th amendments of the U.S. Constitution and civil rights statutes, and characterized elements of his action as based upon Peoples Liberty Bank hiring Covington Police Officers to forcibly take and detain petitioners' home and other real property — then when police officers had to vacate property — Slukich, who was representing the police, stepped up as purchaser.

[24] Of course, (Petitioner) is absolute master of what jurisdiction he will appeal to; and if he goes to the District Court for (violations of his Civil Rights), unless the claim is frivolous or a pretense, the District Court will have jurisdiction on that ground, even through the course of . . . pleadings reveals other more serious disputes. *Healy* v. *Sea Gull Specialty Co.*, 59 L Ed 1058, 237 US 480.

rights; and (3) the deprivation occurred without due process of law. *Flagg Brothers* v. *Brooks*, 436 US 149, 155 (1978).

> A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley* v. *Gibson*, 355 US 41, 45 and;
>
> Summary Judgment against a plaintiff will be vacated, and the cause remanded, where the Federal District Court's order is opaque and unilluminating as to either the relevant facts of law with respect to the merits of the plaintiff's claim. *Carter* v. *Stanton*, 405 US 669, 671.

Defendants admitted that their pleadings and/or motions to dismiss were insufficient, as a matter of law, by failing to respond to petitioner's motion to strike said pleadings and/or motions to dismiss, as insufficient, as a matter of law. (NR 12) (See FRCP 8(b), (c), LR 6(b)(1)(B).

The District Court violated its own Rules (LR 6(b)(1)(A), 6(e), when the Court sua sponte dismissed petitioner's Civil Rights complaint, where petitioners' motion to strike defendants' pleadings and/or motion to dismiss, as insufficient, as a matter of law, where defendants had not responded — and the court dismissed without a hearing.

The District Court abused its discretion when it sua sponte applied an unpleaded, inappropriate State's statute of limitations to an inapposite set of facts, and dismissed petitioner's civil rights claims. Statute of limitations is a personal defense and failure to plead statute of limitations is no defense. *Townsend* v. *Jemison*, 13 L Ed 194, 9 Howell 407

> Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the

constitutional inhibition; and as he acts in the name and for the state and is clothed with the state's power, his act is that of state. *Buchanan* v. *Warley*, 62 L Ed 149, 245 US 60 (1917)

THE QUESTIONS PRESENTED

(1) Whether an action, brought in Kentucky seeking monetary damages from defendants for an alleged racially-based conspiracy against plaintiffs, which included foreclosing on three parcels of real estate, beating and jailing of (petitioner), pursuant to Civil Rights Statutes (42 USC §§1982, 1983, etc.) is subject to Kentucky's one year Statute of Limitation for an action for an injury to the person of the plaintiff? (KRS 413.140(1)(a)[19] or alternately; in an illegal forclosure action where mortgagee, its officers and/or attorney hire city police officers and their attorney to forcibly take real property from mortgagors (petitioners), but mortgagors (petitioners) win a favorable judgment on appeal in the possessory action; is mortgagors' (petitioners') Civil Rights action for damages subject to Kentucky's one year statute of limitations for an action for an injury to the persons of the (petitioners)? (KRS 413.140(1)(a)?

The Courts below acknowledged that petitioner's claims were based upon (undenied) "an alleged racially-based conspiracy against (petitioners) which included foreclosing on three parcels of real estate in 1976 and the 1978 beating and jailing of (petitioner)[17], yet sua sponte, on the basis of *Collard*, *supra*, dismissed without a hearing. (NR 42, App. 6a)

On appeal, the Court of Appeals refused to review the dismissal de novo, rejected petitioner's request to be heard de novo and sua sponte affirmed the District Court.

The *Collard* Court construed (misconstrued) "personal injury" as articulated in the U.S. Supreme Court's decisions. (e.g., *Burnett*, *Goodman*, *Hardin*, *Owen*, *Wilson*) as an "action for injury to the person of plaintiff" as outlined in KRS 413.140(1)(a). The Kentucky Supreme Court has construed KRS 413.140(1)(a) as applicable only to "personal tort" cases where injury is to the person of plaintiff. See cases cited in footnote[19]. Application of that statute, to violation of Civil

Rights, improperly narrows the U.S. Supreme Court's interpretation of personal injuries for deprivation of any right, privileges or immmunities secured by U.S. Constitution and law, for purposes of a section 1983 claims analysis.

In *Wilson*, this Court noted the claims brought under § 1983 include:

> "discrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of school children, deliberate indifference to the medical needs of prison inmates, the seizure of chattels without advance notice of sufficient opportunity to be heard." (footnotes omitted) *Lugar* v. *Edmondson Oil Co.*, 457 US 922, (1982), *Flagg Bros., Inc.* 436 US 149, *Owen, supra*, 102 L Ed 2d 594

Many of these claims bear little if any resemblance to the common-law intentional tort. See *Felder* v. *Casey*, 101 L Ed 2d 123. Even where intent is an element of a constitutional claim or defense, the necessary intent is often different from the intent requirements of a related common-law intentional tort. e.g. *Hustler Magazine* v. *Farewell*, 99 L Ed 2d 41 (distinguishing constitutional "malice".) Given that so many claims brought under § 1983 have no precise state-law analogy applying the statute of limitations for the limited category of intentional torts would be inconsistent with § 1983's broad scope. *Owen*, *supra*, 102 L Ed 2d 594, 605

The (*Collard*) analogy to "injury to the person of plaintiff" also reflects a profound misunderstanding of § 1983's history.

> Section 1983 was the product of Congressional concern about the Ku Klux Klan-sponsored campaign of violence and deception in the south, which was "denying decent citizens their civil rights." *Wilson*, *supra*, 471 US 276; See *Briscoe* v. *LaHue*, 460 US 325. Although these violent acts often resembled the tort of assault, battery, false imprisonment, and misrepresen-

> tation, § 1983 was not directed at the perpetrators of these deeds as much as at the State officials who tolerated and condoned them. "While one of the main scourges of the evil — perhaps the leading one — was the Ku Klux Klan, the remedy create (§ 1983) was not a remedy against it or its members but against those who representing a State in some capacity were unable or unwilling to enforce a State law." *Monroe* v. *Pape*, 365 US 167.

All persons within the jurisdiction of the United States have the same right (to lease real property and) to make and enforce contracts as is enjoyed by white citizens. *Saint Francis College* v. *Al-Khazraji*, 481 US 604 (1987)

(This Court's) decision in *Wilson* that one "simple broad characterization" of all § 1983 actions was appropriate under § 1988 was, after all, grounded in the realization that the potential applicability of different state statutes of limitations (to the same cause of action) had bred chaos and uncertainty. *Id.* at 275, 85 L Ed 2d 254; See also *Burnett* v. *Gratton*, 468 US 42, 50, 82 L Ed 2d 36, 104 S Ct 2924 (1984). Courts selecting a State statute of limitation for § 1983 actions must tak(e) into account practicalities that are involved in litigating federal civil rights claims.

In *Wilson*, (this Court expressly rejected the practice of drawing narrow analogies between § 1983 claims and state causes of actions, explain(ing) that the Civil Rights Acts provided:

> (a) unique remedy mak(ing) it appropriate to accord the statute 'a sweep as road as its language.' Because the § 1983 remedy is one that can 'override certain kinds of state laws.' *Monroe* v. *Pape*, 365 US 167, 173, 5 L Ed 2d 492, 81 S Ct 473 (1961), and is in all events, 'supplementary to any remedy any State might have, *McNeese* v. *Board of Education*, 373 US 668, 672, 10 L Ed 2d 622, 83 S Ct 1433, (1963). It can have no

> precise counterpart in State law. *Monroe*, *supra*, 365 US, at 196, n. 5 (Harlan, J., concurring). Therefore, it is 'the common purest coincidence,' ibid., when state statutes or the common law provide for equivalent remedies; any analogies to those causes of action are bound to be imperfect." Ibid. (footnotes omitted) *Owens* v. *Okure*, 102 L Ed 2d 594, ____ US ____, ____ S Ct ____ (1989)

For the foregoing reasons, this Court should overrule *Collard* and hold KRS 413.140(1)(a) inapplicable to personal injuries for deprivation of any right, privileges or immunities secured by the U.S. Constitution and a mortgage, which is a written contract, for purposes of a section 1983 claims analysis.

(2) Under Kentucky law, upon action in equity for redemption of real property, or damages; must mortgagee or one claiming under him (defendants here) plead a statute of limitation, as a defense in an action where mortgagee and its officers and/or agents hire Covington police officers, who forcibly entered and detained petitioners' (mortgagors') home in order to benefit from application of that statute?

It is well settled in Kentucky that a statute of limitations must be pleaded as an affirmative defense in an answer. In *Reams* v. *Laurel County*, 160 S.W. 2d 176, 180 (1980), the Kentucky Court of Appeals (Kentucky's highest Court at the time) held that:

> Without discussing the merit of this claim made that the action upon the written contract sued on was barred by limitations, it is sufficient answer to such contention to state that the question of limitation is not here before us, for the reason that same can not be raised by demurrer, as here attempted, but must be expressly pleaded in the answer. (Also see FRCP 8(c))

It is well settled that: when persons turns party in possession out by the strong hand, the law compels a defendant found guilty of forcible entry and detainer to restore possession, or pay damages. See *Iron Mountain and Helena Railroad* v. *Johnson*, 30 L Ed 504, 119 US 608

Defendants have never articulated any facts or statute of limitation, that would have ostensibly barred petitioner's claims. Thus, whether petitioner's claims were barred by Kentucky's one year statute of limitations (KRS 413.140(1)(a)) was not present on December 18, 1990, when the District Court sua sponte dismissed petitioner's civil rights action. (NR 42, 43, App. P. 6a, 9a). The District Court abused its discretion, which was plain error. The only statute of limitation available to mortgagee or one claiming under mortgagee in Kentucky is K.R.S. 413.010 and/or 413.070, which provide for fifteen (15) years. Defendants do not claim a statute of limitations.

> While an equitable determination can have collateral estoppel effect in a subsequent legal action without violating the Seventh Amendment, a District Court may not deprive a litigant of the right to a jury by resolving an equitable claim before the jury hears a legal claim involving common issues in the same action; since resolution of common issues by the Court in the instant action has only been possible because of the Court's erroneous dismissal of (petitioners') legal claims, to deprive plaintiff of his right to a jury trial would permit the Court to accomplish through error what it could not have accomplished had it acted correctly. *Lytle* v. *Household Manufacturing, Inc.*, 108 L Ed 2d 504
>
> Statutes of limitation are not controlling measure of equitable relief, but have been drawn upon by equity solely for the light they may shed in determining whether plaintiff has inexcusably slept upon his rights as to make a decree against defendants unfair. *Holmberg* v. *Armbrecht*, 90 L Ed 2d 743 (1946)

In *Hardin* v. *Straub*, 490 US 536, this Court held:

> Limitations periods in § 1983 cases are to be determined by reference to the appropriate "state statute of limitations and coordinate tolling rules", unless their full application would defeat the goals of the federal statute at issue.
>
> As to claims for violation of rights under Federal Constitutional Amendments and claims for violations of Civil Rights Act, borrowing of state limitations periods to determine timeliness of claims was conditioned on state limitations period being consistent with policies underlying Federal Rights of action, and applicable limitations period was that which Court of State would have used had the action been brought there. *Beard* v. *Robinson*, 563 F 2d 331

According to the view of the District Court; "(petitioner) has fully litigated (the) issues (present) here." Petitioner appears to be sincere . . . that the law affords him relief . . ." (NR 85, App. P. 11a, 12a) The Sixth Circuit did not disagree with those facts. An objection to a recovery for violation of Civil Rights cannot be raised by failure to plead facts. That would be against public policy.

Clearly, failure to plead any statute, barred that defense in this action. See *Oscanyan* v. *W. H. Arms Co.*, 103 US 261 (1881) and *Townsend* v. *Jemison*, 13 L Ed 194, 9 Howell 407.

(3) Based upon the uncontroverted facts in the record, is Petitioner entitled to summary judgment, as a matter of law?

Where a motion to dismiss is before the Court, the parties are entitled to a hearing[25] on the motion[26].

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[25] FRCP 12(d) and Evidentiary Rule 201(d), (e), (f).

[26] One of the principal purposes of summary judgment is to isolate and

Under Rule 56(c), summary judgment is proper, "if pleading, dispositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any, material fact and that the moving party is entitled to a judgment as a matter of law." . . . (T)he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he had the burden of proof. "The standard for (granting summary judgment) mirrors the standard for a directed verdict under (FRCP) Rule 50(a). *Celotex Corp.* v. *Catrett*, 477 US 317, 322, 323.

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dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. Party seeking summary judgment always bears the initial responsibility of informing the Court of basis for motion, identifying those portions of the pleadings, dispositions, answers to interrogatories, and admissions, affidavits, if any, which demonstrate absence of any genuine issue of material fact. *Celotex*, 417 US 317.

CONCLUSION

From the face of the complaint, defendants' admissions[27] on file, prior proceedings, and affidavit of petitioner, it is clear that: (1) Certiorari should be granted in this important Civil Rights action; (2) petitioners are entitled to summary judgment as a matter of law; and (3) *Collard*, *supra*, should be overruled.

Defendants never met their threshold responsibility[28] of informing the District Court of their basis for claiming *Collard* or KRS 413.140(1)(a) was applicable to the facts of this case.

The errors below may not have occurred if defendants had not pretended the law supported them.

WHEREFORE:

Petitioners respectfully request this Court to: (1) reverse the decision below, with direction to the District Court to enter summary judgment for petitioner; (2) order District Court to hold a hearing to determine damages; (3) order defendants to pay the reasonable costs incurred by petitioner in the prosecution of this Civil Rights action, including a reasonable attorney's fee.

_____

Eddie Thompson, Jr., Pro Se

_____

Patricia Thompson, Pro Se

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[27] *Shelton* v. *United States of America*, 346 US 270, 97 L Ed 2d 1603, 73 S Ct 1030 (1953).

[28] Litigants "may not pretend that the law favors their view and impose on the Court of their adversaries the burden of research to uncover the basis Rule." Ostrich-like tactic of pretending that potentially dispositive authority against a litigant's position does not exist is as unprofessional as it is pointless." *Mars Steel* v. *Continental*, 880 F 2d 928, 938-39.

APPENDIX

No. 91-5495

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUT

PATRICIA THOMPSON; EDDIE THOMPSON, JR.,
Plaintiffs-Appellants,

v.

PEOPLES LIBERTY BANK, also known as Star Bank of Kenton County, Inc.; RALPH HAILE; RICHARD NELSON; RICHARD SLUKICH; CITY OF COVINGTON; DENNY BOWMAN; JOSEPH CONDIT; TERRY HUGHES; DANIEL ZALLA; JOHN ELFERS,
Defendants-Appellees.

ORDER
(Filed January 6, 1992)

BEFORE: KENNEDY and JONES, Circuit Judges, and HARVEY, Senior District Judge.*

These pro se appellants petition for rehearing of this court's August 5, 1991, order affirming the district court's dismissal of their civil rights action.

After careful consideration of the petition for rehearing, the panel concludes that it has not overlooked or misapprehended any point of law or fact in its order of August 5, 1991. Fed. R. App. P. 40(a).

* The Honorable James Harvey, Senior U.S. District Judge for the Eastern District of Michigan, sitting by designation.

Accordingly, it is ORDERED that the petition for rehearing is denied.

ENTERED BY ORDER OF THE COURT
/s/ LEONARD GREEN
Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
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No. 91-5495

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUT

PATRICIA THOMPSON; EDDIE THOMPSON, JR.,
Plaintiffs-Appellants,

v.

PEOPLES LIBERTY BANK, also known as Star Bank of Kenton County, Inc.; RALPH HAILE; RICHARD NELSON; RICHARD SLUKICH; CITY OF COVINGTON; DENNY BOWMAN; JOSEPH CONDIT; TERRY HUGHES; DANIEL ZALLA; JOHN ELFERS,
Defendants-Appellees.

ORDER
(Filed August 5, 1991)

BEFORE: KENNEDY and JONES, Circuit Judges, and HARVEY, Senior District Judge.*

Patricia Thompson and Eddie Thompson, Jr., Kentucky residents, appeal pro se from the district court order dismissing their civil rights action filed under 42 U.S.C. §§ 1982, 1983, and 1985. This case has been referred to a panel of the court

* The Honorable James Harvey, Senior U.S. District Judge for the Eastern District of Michigan, sitting by designation.

pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Mr. and Mrs. Thompson filed this complaint on September 14, 1990, seeking monetary damages from the defendants for an alleged racially-based conspiracy against them which included foreclosing on three parcels of real estate in 1976, and the 1978 beating and jailing of Eddie Thompson. The district court granted defendants' motion to dismiss on the ground that the complaint was barred by the statute of limitations. The district court also noted that the claims were probably barred by res judicata, based on previous actions filed by the plaintiffs in both state and federal courts which arose out of the same alleged facts. This appeal followed.

Upon consideration, it is concluded that this action was properly dismissed as barred by the statute of limitations. The statute of limitations for civil rights actions arising in Kentucky is one year. *Collard* v. *Kentucky Board of Nursing*, 896 F.2d 179, 182 (6th Cir. 1990). Plaintiffs' argument that the statute was tolled when the district court abstained from deciding the federal claims in a previous action is meritless, as the record shows the district court did not abstain in the previous case, but rendered summary judgment for the defendants. Accordingly, the district court's judgment is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit. Appellee Slukich may submit a bill of costs within fourteen days of the date of entry of this order.

ENTERED BY ORDER OF THE COURT
/s/ LEONARD GREEN
Clerk

Case No. 91-5495

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUT

PATRICIA THOMPSON; EDDIE THOMPSON, JR.,
Plaintiffs-Appellants,

v.

PEOPLES LIBERTY BANK, also known as Star Bank of Kenton County, Inc.; RALPH HAILE; RICHARD NELSON; RICHARD SLUKICH; CITY OF COVINGTON; DENNY BOWMAN; JOSEPH CONDIT; TERRY HUGHES; DANIEL ZALLA; JOHN ELFERS,
Defendants-Appellees.

ORDER
(Filed March 3, 1992)

BEFORE: KENNEDY and JONES, Circuit Judges; HARVEY, District Judge.*

Upon consideration of the appellants' motion to recall the mandate,

It is ORDERED that the motion be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT
/s/ LEONARD GREEN
Clerk

* The Honorable James Harvey, District Judge for the Eastern District of Michigan, sitting by designation.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 90-163

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.,
PLAINTIFFS,

vs.

PEOPLES LIBERTY BANK, a/k/a STAR BANK OF KENTON COUNTY, INC.; RALPH HAILE; RICHARD NELSON; RICHARD SLUKICH; CITY OF COVINGTON; DENNY BOWMAN; JOSEPH CONDIT; TERRY HUGHES; DANIEL ZALLA; AND JOHN ELFERS,
DEFENDANTS.

ORDER
(Filed December 18, 1990)

This matter is before the court on the motion to dismiss of the defendants on the ground that this action is barred by the Statute of Limitations and also by the doctrine of *res judicata*.

Because passing on the *res judicata* issue would involve time-consuming comparison of this case with previous actions filed by the plaintiffs in this court, the court will limit its ruling to the Statute of Limitations issue.

Defendants argue that the suit should be dismissed because the applicable Statute of Limitations for tort actions is one year. Defendants maintain that the actions complained of are in the nature of tort actions, and that they all occurred more than one year ago. Defendants also contend that, as KRS 413.120 provides a general five year Statute of Limitations for other items covered by specific statutes, and that no action occurred more than five years ago, the suit is further barred.

Plaintiffs contend that the statute has not run because the

acts of defendants depriving plaintiffs of rightful possession of their property have been continuous since 1979. Plaintiffs appear to mean that the effect has been continuous. Plaintiffs also contend that defendants' conduct has been fraudulent, and that they are, therefore, barred from asserting a Statute of Limitations.

Plaintiffs appear to think that the nature of the action is basically to recover real property. Hence, they maintain that the Statute of Limitations for torts does not apply, and that the appropriate statute is fifteen years.

In *Owens* v. *Okure*, 109 S. Ct. 573 (1989), the Supreme Court held that the state law governing residual or general personal injury actions shall provide the Statute of Limitations for section 1983 actions. The Sixth Circuit recently eliminated any confusion regarding the applicable Kentucky statute. "[S]ection 1983 actions in Kentucky are limited by the one-year Statute of Limitations found in section 413.140(1)(a)." *Collard* v. *Kentucky Bd. of Nursing*, 896 F.2d 179, 182 (6th Cir. 1990). *See also Holbert* v. *West*, 730 F. Supp. 50, 52 n.1 (E.D. Ky. 1990); *Hambrick* v. *Davies*, 711 F. Supp. 884, 885-86 (E.D. Ky. 1989). The Statute of Limitations begins to run when the plaintiff knows or has reason to know of the injury which is the basis of his action. *Sevier* v. *Turner*, 742 F.2d 262, 273 (6th Cir. 1984).

Plaintiffs' cause of action in this matter is barred by the one year Statute of Limitations. The actions that plaintiffs principally complain of occurred from 1975-1977. Even the subsequent conveyances of the three parcels, which plaintiffs maintain were effected in order to conceal the initial fraudulent foreclosure, occurred in the latest instance in 1988.

Therefore, the court being advised,

IT IS ORDERED as follows:

1. That the motion of plaintiffs to strike pleadings be, and it is, hereby denied;

2. That the motion of defendants to dismiss be, and it is, hereby granted, and this matter will be dismissed, with prejudice as barred by the Statute of Limitations by separate Judg-

ment entered concurrently herewith. The court notes that most of the claims are probably also barred by *res judicata* as a reading of the plaintiffs' complaint seems to involve the same allegations as previous claims of the plaintiffs ruled on by the court at previous times.

This 18th day of December, 1990.

/s/ WILLIAM O. BERTELSMAN,
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 90-163

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.,
PLAINTIFFS,

vs.

PEOPLES LIBERTY BANK, a/k/a STAR BANK OF KENTON COUNTY, INC.; RALPH HAILE; RICHARD NELSON; RICHARD SLUKICH; CITY OF COVINGTON; DENNY BOWMAN; JOSEPH CONDIT; TERRY HUGHES; DANIEL ZALLA; AND JOHN ELFERS,
DEFENDANTS.

JUDGMENT
(Filed December 18, 1990)

Pursuant to the Opinion and Order of this court entered concurrently herewith,

IT IS ORDERED AND ADJUDGED that the within matter be, and it is, hereby dismissed, with prejudice at the cost of plaintiffs.

This 18th day of December, 1990.

/s/ WILLIAM O. BERTELSMAN,
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 90-163

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.,
PLAINTIFFS,

vs.

PEOPLES LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER
(Filed March 4, 1991)

This matter is before the court on the motion of plaintiff to vacate the Judgment entered herein, to grant plaintiff's motion to strike motions filed by defendants, to take judicial notice of prior pretrial conference and proceedings, and to making findings of fact with motion to support; motion of plaintiff for hearing; motion of plaintiff for an Order compelling answers to interrogatories by Daniel Zalla; and defendants' responses thereto, and the court being advised,

IT IS ORDERED that all of plaintiff's motions be, and they are, hereby denied. The court notes that this case has been dismissed and the court is unwilling to put the defendants to the expense and inconvenience of attending any such hearing on plaintiff's motions.

This 4th day of March, 1991.

/s/ WILLIAM O. BERTELSMAN.
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 90-163

PATRICIA THOMPSON AND
EDDIE THOMPSON, JR.,
PLAINTIFFS,

vs.

PEOPLES LIBERTY BANK, ET AL.,
DEFENDANTS.

ORDER
(Filed June 6, 1991)

This matter is before the court on various motions of the parties, and the court having reviewed the record and being advised,

IT IS ORDERED as follows:

1. Plaintiff's motion for sanctions against defendants for their failure to properly answer requests for admissions be, and it is, hereby denied. *See* Rule 37(c). Plaintiff has raised no grounds to impose sanctions pursuant to Rule 11. Accordingly, plaintiff's motion for sanctions for violation of Rule 11 be, and it is, hereby denied.

2. Plaintiff has filed a pleading under Fed.R.App.P. 10(c): "Plaintiff's Statement of Evidence and/or Proceedings." Defendants have filed Objections to this pleading. Under the Rule, the statement and objections are submitted to the district court for settlement and approval. The court notes that Rule 10(c) is inapplicable under the circumstances of this case. The purpose of the Rule is to preserve on the record any proceedings which were held but not recorded. *See* 9 Moore, Moore's Federal Practice, ¶ 210.06. No hearings or trial were held in this case;

there is no shortcoming in the record for which the Rule can provide a remedy.

3. Defendants Slukich's and Zalla's motion for sanctions, attorney fees and a permanent injunction be, and it is, hereby granted in part and taken under submission in part, as follows:

A. Mr. Thompson appears to be sincere in his belief that the law affords him relief for his unsuccessful real estate transactions in the 1970's. However, he has fully litigated these issues and is draining the resources of the court and the parties named as defendants. The court had previously awarded attorney's fees to defendants, who have not attempted to collect, perhaps out of fear of further protracting the litigation.

The court can fashion other remedies. *Filpas* v. *Lemons*, 835 F.2d 1145 (6th Cir. 1987); *Kersh* v. *Borden Chemical*, 689 F. Supp. 1442 (E.D. Mich. 1988). The remedy must be narrowly tailored to "protect the courts and innocent parties, while preserving the legitimate rights of litigants." *Farguson* v. *MBank Houston, N.A.*, 808 F.2d 358, 360 (5th Cir. 1986). In *Filipas*, the Sixth Circuit affirmed a district court which required leave of court before plaintiffs, who had filed many civil rights complaints concerning the same 1972 car accident, could file another complaint in the same matter. 835 F.2d at 1146. "This requirement is the proper method for handling the complaints of prolific litigators, and the process does not violate the first amendment." *Id.* Other circuits have affirmed orders requiring leave of court before the filing of additional pleadings. *See Matter of Packer Ave. Associates*, 884 F.2d 745, 747 (3rd Cir. 1989).

Accordingly, the court orders that plaintiffs may not file any further pleadings, except a Notice of Appeal, or new actions dealing with issues raised in Covington Civil Action No. 90-163 without leave of this court. In seeking leave of court, appellant must certify that the claims he wishes to present are new claims, never before raised and disposed of on the merits by any federal court. Upon failure to certify or upon a false certification, appellant may be found in contempt of court and punished accordingly.

B. Defendants' motion for sanctions and attorney's fees be, and it is, hereby taken under submission, pending the outcome of the appeal.

This 6th day of June, 1991.

/s/ WILLIAM O. BERTELSMAN,
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

NO. 90-163

PATRICIA THOMPSON
EDDIE THOMPSON, JR.
PLAINTIFFS.

vs.

PEOPLES LIBERTY BANK (AKA STAR BANK OF KENTON COUNTY, INC.), RALPH HAILE, RICHARD NELSON, RICHARD SLUKICH, CITY OF COVINGTON, DENNY BOWAN, JOSEPH CONDIT, TERRY HUGHES, DANIEL ZALLA, JOHN ELFERS.
DEFENDANTS.

SERVE: MR. BREMER EHLER, SECRETARY OF STATE, MR. FREDERIC COWAN, KENTUCKY ATTORNEY GENERAL, BOTH OF FRANKFORT, KY. 40601; MR. DOUGLAS THOMPSON, REGISTERED AGENT FOR PEOPLES LIBERTY BANK (AKA STAR BANK OF KENTON COUNTY, INC.) and MR. RALPH HAILE, ESTATE OF RICHARD NELSON, C/O PEOPLES LIBERTY BANK, 6th & MADISON; MR. DENNY BOWMAN, MR. JOSEPH CONDIT, MR. TERRY HUGHES, 18 PIKE ST.; MR. DANIEL ZALLA, 211 Garrard; MR. JOHN ELFERS, ROOM 308, COUNTY BUILDING, 3rd AND COURT, MR WILLIAM MARTIN, (NKCC) 824 GREENUP ST., All of COVINGTON, KY. 41011; KENTUCKY ENTERPRISE FEDERAL SAVINGS AND LOAN, 800 MAMMONTH ST., NEWPORT, KY 41071, AND. MR. CHARLES CHAPMAN, 911 Arlington Rd., Park Hills, Ky 41011.

COMPLAINT
(Filed September 14, 1990)

* * *

This action is brought pursuant to 42 USC § 1982, § 1983 AND § 1985, to redress the deprivations under color of state law, statute, ordinance, regulation, custom, or usage of rights, privileges, and immunities secured by the constitution and laws of the United States. The rights herein sought to be protected are secured by the Thirteenth and Fourteenth Amendments of the U.S. Constitution; and plaintiffs seek damages for violation thereof. Jurisdiction of this court is invoked pursuant to Title 28 USC § 1343 (3).

COUNT I

Plaintiffs, (Patricia) and (Eddie) Thompson, Jr., (hereinafter plaintiffs), first being duly cautioned and sworn, for their cause of action, states as follows;

(1) Plaintiffs are negroes, who now and at all times relevant to the instant action, reside in the City of Covington, Kenton County, Ky., hereinafter City.

(2) Plaintiffs had, inter alia, intergrated the neighborhood where they (plaintiffs) lived (736 Highland) as home owners, (1968); operated a business in an area of the City indentified as the model neighborhood area, where plaintiffs had managed to form a neighborhood corporation, American Urban Peoples' Economic Development Corporation (1971) (hereinafter AUPED) and the Covington Housing Development Corporation (1972).

(3) In reprisal, city officials, officials of PLB, and Mr. John Elfers conspired to deprive plaintiffs of their home and other possessions under color of state law.

(4) Peoples Liberty Bank (hereinafter PLB) was a Kentucky Banking Corporation at all times mentioned herein.

(5) Mr. Ralph Haile was president of PLB at all times mentioned herein.

(6) Mr. Richard Nelson (now deceased) was counsel and agent for PLB at all times mentioned herein.

(7) Mr. Richard Slukich is a criminal lawyer, hired by PLB, for the sole purpose of criminally prosecuting plaintiffs in order to deprive plaintiffs of their home and other possessions, without due process of law.

(8) The City is a municipality, with powers to appoint agents and officers to manage its affairs and defend its interests.

(9) Mr. Denny Bowman is currently the mayor of the City.

(10) Mr. Joseph Condit was City Manager at the time of the wrongful foreclosures (August 1976), and is now City Solicitor.

(11) Mr. Terry Hughes is an agent of the City, who acted in consort with other agents of the City to conceal what they (all agents of the City) knew to be a fraudulent transfer of plaintiffs' home to Mr. John Baker, Jr., an incompetent.

(12) Mr. Daniel Zalla is an attorney; who, inter alia, prosecuted plaintiffs on false criminal charges for the City. (Ex W-1, W-2, and W-3).

(13) Mr. John Elfers is Kenton County Attorney and has the responsibility, inter alia, of prosecuting misdemeanor offense and of addressing allegations of police misconduct, prosecutorial misconduct, and other civil matters affecting Covington and Kenton County.

(14) The police officers mentioned herein were acting as agents for the City, Mr. Elfers, and PLB.

(15) Prior to August 26, 1976, plaintiffs held title to and/or interest in 3 parcels of real estate located in the City described as follows:

> Exhibit A, commonly known as 736 Highland Avenue.
>
> Known as lot No. 2 of Deye's Subdivision in Kenton County, Kentucky, and described as follows:
>
> Beginning at the common corner of Lots 1 and 2 of Block "A" of Deye's Subdivision 40.58 feet east of the

east line of the alley 6 feet in width the center line of which is the dividing line between Lot No. 1 and Louis Trenkamp; thence eastwardly along the north line of Highland Avenue 40.59 feet to the common corner of Lots 2 and 3 of said subdivision; thence northwardly along the dividing line between Lots, 146 feet to the south line of an alley 16 feet in width the corner of said Lots 2 and 3; thence westwardly along the south line of said alley 40.82 feet to the corner of Lots 2 and 1; thence south along the division line of said Lots 147.35 feet to the beginning, being Lot 2 of said subdivision.

Also an easement in and to the north 25 feet of that part of said Avenue immediately in front of said Lot 2, and the south half of that part of said alley immediately in the rear of said Lot 2.

Being the same property conveyed to the Grantor herein by deed from William J. Deupree as Master Commissioner of the Kenton Circuit Court dated June 27, 1977 and recorded in Deed Book 695, At Page 3, of the Kenton County Clerk's records at Covington. Exhibit B, commonly known as 1013-1015 Greenup.

Being a part of Lot #10 in Lee's Subdivision as shown on copied and restored plat #330 of the Kenton County Clerk's records at Covington, Kentucky and further described as follows;

Situated at the northwest corner of Greenup and Robbins Street, fronting 30 feet on the west side of Greenup Street and from that front extending backwestwardly along the north line of Robbins Street between parallel lines 119 feet and 10 inches so as to include the shed located on the premises.

Being the same property conveyed to the Grantor herein by deed from William J. Deupree as Master Commissioner of Kenton Circuit Court dated June 27,

1977 and recorded in Deed Book 695, at Page 1, of the Kenton County Clerk's records at Covington.

Exhibit C, commonly known as 1013-1015 Greenup St.

Beginning at the southwest corner of intersection of Greenup and 10th Street; thence running southwardly thence westwardly at right angles 75 feet; thence northwardly on a line parallel with Greenup Street; thence eastwardly along the south line of 10th Street 75 feet to the place of beginning.

Being the same property conveyed to George A. Gover by deed from William J. Deupree, Jr., Master Commissioner, dated the 19th day of May, 1977 and recorded in Deed Book 692, Page 6. Kenton County Records at Covington.

(16) On August 27, 1976, PLB filed 2 foreclosure suits wrongfully foreclosing on 3 parcels of real estate, plaintiffs owned or had controlling interest in.

Suit 1, Peoples Liberty Bank V Thompson (31053) Ex. A & B.

Suit 2, People Liberty Bank V American Urban Peoples Economic Development Corp. (31054) Ex. C.

(17) While Plaintiffs were being prosecuted on false criminal charges (Ex. W-1, W-2, W-3) by City officials, PLB obtained a judgment and order of sale; for 1001-1003 Greenup St., (Ex. C) on March 29, 1977; and for 736 Highland Ave. (Ex. A) and 1013-1015 Greenup St. (Ex. B) on April 21, 1977.

(18) Neither Mr. Gover nor PLB acquired possession or control of plaintiffs home or other real property by purchasing them at a foreclosure sale.

(19) Neither Mr. Gover nor PLB could transfer its bid, its master commissioner's deed (Ex. A, B, C) or authorize any one else, to evict plaintiffs, or otherwise disturb plaintiffs

possession, enjoyment and control of plaintiffs' property, until plaintiffs' had been evicted by statutory process. i.e. forcible detainer or writ of possession.

(20) In any statutory proceeding, plaintiffs were entitled to a hearing where, plaintiffs would be free to put forth any lawful reason, why a judgment (forcible detainer or writ of possession) should not be granted, including the validity of the sale. i.e. Was the property appraised?

(21) To gain possession of 736 Highland Ave. and 1013-1015 Greenup St., on September 14, 1977, PLB filed a complaint for forcible detainer in the Kenton Quarterly Court, Styled PLB V Thompson, case NO. 9817, (Ex. D-1).

(22) On September 26, 1977, the Quarterly Court rendered judgment for PLB. (NO. 9817).

(23) The Kenton Circuit Court dismissed, with prejudice. (PLB V Thompson, (NO. 33430), affirmed 79-CA-1456. Ex. D-2).

(24) Said judgment had the effect of denying PLB's claims of title to the properties involved therein, and is still in full force and effect.

(25) On March 8, 1978, plaintiff filed a Rule 60.02 motion to vacate and set aside the wrongful foreclosure in suit 1, for lack of appraisement. (PLB V Thompson, (31053).

(26) Judgment determining title to land is binding on parties and their privies.

(27) With full knowledge that there were no appraisals, PLB did not make a written response to the motion.

(28) The motion was overruled on March 21, 1978.

(29) Plaintiffs had until April 20, 1978 to file a notice of appeal.

(30) The Honorable Judge Goodenough is purported to have signed a writ of possession on April 12, 1978, during the time plaintiffs had to file a notice of appeal. (Ex. T).

(31) PLB knew the writ dated April 12, 1978 was null and void, and did not attempt to "have the sheriff execute the writ" within 10 days of April 12, 1978 (Ex. T).

(32) Plaintiffs had no notice or knowledge of a writ of

possession dated April 12, 1978, until July 19, 1978, when PLB hired police officers to execute it. (Ex. T).

(33) After the writ of possession signed on April 12, 1978 was executed on July 19, 1978, Mr. Nelson admitted that he (Nelson) had "inadvertently" inserted the date of April 12, 1978 on the Writ. (Ex. T, U).

(34) Subsequent to Mr. Nelson acknowledging that he inserted April 12, 1978 on the writ (Ex. T, U), the Honorable Judge Goodenough signed a writ dated April 12, 1978 (Ex. V). Notations on the writ say, "Richard S. Nelson, not paid fees."

(35) On April 15, 1978, police officers Thomas Epperson, James Tucker, and Todd Finan attacked and beat plaintiff (Eddie), causing much harm, pain and suffering.

(36) Officer Finan pulled a non service gun and threatened to put plaintiff (Eddie) in the river.

(37) After the assault and threat on (Eddie's) life and without probable cause or provocation, the police officers locked (Eddie) in the county jail, without informing (Eddie) that he had violated any law, statute, or ordinance.

(38) The attack on (Eddie) by police officers was to assist PLB in the execution of the writ of possession dated April 12, 1978, (Ex. T, V) and to prevent an appeal of the March 21, 1978 order denying a Rule 60 motion.

(39) No citation was issued by police, no complaint was filed by police and no summons or warrant issued from the court on any alleged offense occurring on April 15, 1978. Kenton District Court NO. 78-M-1186.

(40) On April 18, 1978, plaintiff (Eddie) filed charges against the 3 police officers, who had beat him (Eddie) on April 15, 1978, pursuant to KRS 95.450.

(41) City officials conducted an in house investigation, of (Eddie's) allegations that police officers beat and threaten to put him (Eddie) in the river, which revealed that the police officers had acted improperly on April 15, 1978.

(42) City officials wilfully refused to hold the hearing requried when charges of misconduct are brought against police officers. (KRS 95-450).

(43) The refusal to hold the hearing required by 95.450 suppressed evidence, concealed city officials approval and support of known misconduct by police officers and denied plaintiffs procedural due process under the state law.

(44) To gain possession of plaintiffs' home (736 Highland Ave.), on July 19, 1978, PLB; (1) had the sheriff's deputies to purport to execute a void writ of possession dated April 12, 1978, (Ex. T), (2) leased plaintiffs' home to police officers Bernard Smith and James Liles, (Ex. E) who made a forcible entry into plaintiffs' home, ordering family and children out of house under menacing threats of arrest and violence and, (3) hired at least 6 additional police officers at $5.00 an hour to occupy plaintiffs' home.

(45) One of the six policemen was officer Finan, who had, on April 15, 1978, pulled a non service gun on (Eddie) and had threatened to put him (Eddie) in the river.

(46) In the lease agreement of July 19, 1978, between PLB and Officer Smith, PLB indemnified the city and police officers, in the event police officers shot and/or killed plaintiffs' and/or their family members in the forcible taking of their (plaintiffs') home. (Ex. E).

(47) On July 27, 1978, PLB and city officials had Police Officers to leave 736 Highland Avenue after learning that plaintiffs would present a petition to the city officials inquiring of the validity of police officers taking plaintiffs home and all of their personal possessions.

(48) On or about July 27, 1978, PLB, and Mr. Haile purported to convey 736 Highland Ave. to Mr. Richard Slukich for the purpose of hindering, delaying and defrauding plaintiffs of their home and other possessions. (EX. F and G)

(49) The conveyances of land which is in adverse possession of another is "champertous" and "void."

(50) The 5 or 10 year statute of limitation does not apply to a void deed.

(51) When a wrongful foreclosure occurs, mortgagor (plaintiffs here) have alternate and inconsistent remedies. Mortgagors may sue mortgagee (PLB) in equity to set the

foreclosure aside, or in law for damages, allowing the foreclosure to stand.

(52) On July 29, 1978, about 11:00 A.M., Mr. Slukich came to plaintiffs' home and told plaintiffs he (Slukich) had purchased 736 Highland and if plaintiffs did not leave, he (Slukich) would have (Eddie) arrested for criminal trespassing.

(53) On July 29, 1978, about 1:00 P.M., 2 police officers and 2 detectives came to plaintiffs' home and arrested (Eddie) on criminal trespassing charges filed by Mr. Slukich.

(54) The detectives advised (Eddie) that Mr. John Elfers, Kenton County Attorney, had directed that (Eddie) be arrested on criminal trespassing charges brought by Mr. Slukich. (Kenton Dist. NO. 78-M-2912).

(55) Mr. Elfers had no authority to issue a warrant (KRS 15-725(2) charging (Eddie) with criminal trespassing at plaintiffs' home and the district court had no jurisdiction to try a case involving title to real property. (KRS 24A.120).

(56) At the time Mr. Elfers signed the warrant for Mr. Slukich, Mr. Elfers was advising his client (Mr. George Gover, the purchaser of 1001-1003 Greenup) to file criminal trespassing charges against (Eddie).

(57) While holding (Eddie) in jail, for trial in Commonwealth V Thompson (78-M-2912) on August 25, 1978, and with personal knowledge that no citation, complaint, warrant or summons had issued in (78-M-1186); Mr. Elfers and city officials consorted to try, and convict (Eddie) in (78-M-1186) in order to obstruct justice, and to assist PLB, Mr. Haile, Mr. Nelson, city official and Mr. Slukich, whom plaintiffs were attempting to sue in federal court. Thompson V PLB, Et al 78-57, 78-70, 79-40).

(58) Later and without jurisdiction (78-M-2912); Mr. Elfers permitted Mr. Slukich to serve as Co-prosecutor in the malicious prosecution of (Eddie) to further assist PLB, Mr. Haile, Mr. Nelson, Mr. Slukich, and Mr. Gover, a client of Mr. Elfers.

(59) Judgment is "void" when court proceeds without

authority and in manner forbidden by law with respect to matter being adjudicated.

(60) The judgments in Commonwealth V Thompson 78-M-1186 and 78-M-2912 are both null and void.

(61) The City spent over $48,000.00 to help effect the discriminatory and forcible taking of plaintiffs' home and business property.

(62) The involvement of city officials, police officers and Mr. Elfers in the wrongful taking and detention of plaintiffs' home and business property was done under color of state law.

(63) As a result of these and other false criminal charges brought against plaintiffs and family by defendants' plaintiffs were arrested and jailed numerous times (90 days one time) without cause, were fined over one thousand ($1,000.00) and have spent several thousand dollars in defense of these false charges.

(64) Plaintiffs file suit in the kenton circuit court (Thompson V PLB, Et al 86-1266) on September 12, 1986, seeking damage for, inter alia, wanton misconduct in the wrongful taking and detention of plaintiffs' real and personal property. The circuit court dismissed without a hearing, affirmed by unpublished Opinion (87-CA-1132), August 19, 1988, Discretionary review denied, March 8, 1989, certiorari denied (88-1965), October 2, 1989.

(65) With the intent of concealing the aforementioned fraudulent and deceitful acts the above named defendants recruited Mr. John Baker, Jr., an incompetent person to purchase plaintiffs' home. (736 Highland).

(66) City officials provided legal assistance and over $23,000.00 in federal assistance to the Baker family, if the Baker family would move into plaintiffs' home.

(67) On or about April 13, 1981, Mr. Slukich purported to convey plaintiffs' home to Mr. Charles Chapman (Ex. H), with personal knowledge that the sale would be made to Mr. Baker, an incompetent person.

(68) On or about May 8, 1981, Mr. Terry Hughes, City

engineer prepared a plat of survey and wrote a plat description to be used in the fraudulent transfer of plaintiffs' home to Mr. John Baker, Jr. (EX. I and J).

(69) On or About May 27, 1981, Mr. Daniel Zalla, with full and personal knowledge of the fraudulent and deceitful acts mentioned herein, prepared a deed for Mr. John Baker, Jr., (from Chapman to Baker) changing the group series from group 3674 to group 381 and representing group 381 as being in Campbell County, rather than Kenton County, (Ex. J).

(70) Lending institutions in the city had public notice of plaintiffs' claim of PLB wrongful foreclosure, the use of police officers to forcible take plaintiffs' home, and the deed to Mr. Slukich.

(71) Kentucky Enterprise Federal Saving and Loan (hereinafter KEFSL), with full knowledge of the fraudulent and deceitful acts mentioned herein, made a loan of $32,000.00 to Mr. John Baker, Jr., through its (KEFSL'S) Newport Office, to purchase plaintiffs' home for $47,000.00. (Ex. K).

(72) At the time PLB foreclosed on plaintiffs' home, plaintiffs owed PLB 6836.00 on 736 Highland Ave.

(73) On or about December 6, 1985, KEFSL filed a foreclosure action against Mr. John Baker, Jr., styled KEFSL V BAKER, Et al, NO. 85-CI-2091. (Ex. L).

(74) To further conceal the indentity of Mr. Baker and the fraudulent and deceitful acts mentioned herein, the City, KEFSL, and Mr. Zalla arranged a private sale of plaintiffs' home to Joyce and Danny Pendergratt. (Ex. M).

(75) The foregoing facts continue to deny plaintiff possession and use of their home and other possession.

COUNT II

(76) Plaintiffs reiterates and affirms all of the allegations contained in count 1, paragraph 1 through 75.

(77) At about the time PLB gave Mr. Slukich a deed to 736 Highland Ave., PLB made a public announcement that PLB was donating 1013-1015 to the Northern Kentucky Community Center (hereinafter NKCC).

(78) The announcement was a public notice to plaintiffs that should they attempt to utilize their property at 1013-1015 Greenup, they would be subject to arrest for being on the premises. (charged with criminal trespassing).

(79) No Judge would sign a warrant charging plaintiffs with criminal trespassing, so city officials prosecuted malicious housing violation charges against plaintiffs. (Ex. W-2, 2, 3).

(80) These convictions were appealed to the Kenton Circuit Court where they still have not been heard or dismissed, even though plaintiffs have exhausted all avenue available to them (plaintiffs) in state court. (Commonwealth V Thompson (17936) and (18227 A & B).

(81) The deed from PLB to NKCC was not recorded until about August 30, 1983. (Ex. N).

(82) Within 3 months, about November 21, 1983, the City paid NKCC $12,000.00 for 1013-1015, whereby NKCC would warrant and defend the title against all legal claims. (Ex. o).

(83) On or about July 30, 1986, the City conveyed plaintiffs property at 1013-1015 Greenup st. to Lillian and Charles Johnson, (Ex. P).

(84) PLB and city officials were aware that plaintiffs could not fully direct their resources to the completion of the rehab project at 1013-1015 Greenup St. and defend the wrongful foreclosures.

(85) At the time PLB foreclosed on 1013-1015 Greenup St., plaintiffs had approximately $35,000.00 equity in the property, (included the $20,000.00 owed PLB).

COUNT III

(86) Plaintiffs reiterate and reaffirm all of the allegations in count 1, paragraph 1 through 75.

(87) Plaintiffs' ownership and right to damages for wrongful foreclosure, wrongful taking, and wrongful detention of 1001-1003 Greenup St., are based upon; (1) the fact that the foreclosure was part of a conspiracy by city officials,

Mr. Condit, Mr. Elfers, and PLB to wrongfully deprive plaintiffs of their real and business property, (2) Mr. Elfers had a personal interest in the outcome of the foreclosure, (3) the fact that the state court refused to let plaintiffs make a defense to the wrongful foreclosure, and (4) failure of the purchaser (Mr. Gover) to seek possession.

(88) When Mr. Gover attempted to gain possession of 1001-1003 Greenup, Mr. Gover found plaintiff (Eddie) in possession.

(89) On or about July 26, 1979, with plaintiffs still in possession, Mr. Gover purported to conveyed 1001-1003 Greenup to Mr. Raleigh Fender. (Ex. Q).

(90) Mr. Fender was a client of Mr. Elfers.

(91) On or about June 21, 1982, the City purported to purchase 1001-1003 Greenup from the estate of Mr. Fender. (Ex. R).

(92) Because of the city's intense efforts to stiffle minorities' participation in business and housing endeavors, the City mischievously destroyed plaintiff's building and business equipment at 1001-1003 Greenup St.

(93) On October 27, 1988, the City conveyed plaintiffs' property at 1001-1003 Greenup St. to Thomas and Virginia Schrage by quit claim deed. (Ex. S).

(94) At the time of the foreclosure of 1001-1003 Greenup St. the building and business equipment were worth about $36,000., which was security for the approximately $13,000.00 owed PLB.

(95) Defendants have used the civil and criminal process of the court as a tool of oppression to deprive plaintiffs of their home, business and personal effects; and in doing so, have jointly and severally, perpetuated fraud upon the court, and have abused the process of the court, all to the discredit of the court and the law, and to the greater harm and injury of plaintiffs and their children.

Patricia Thompson

Eddie Thompson, Jr.

Subscribed and sworn to before me this 13th day of September, 1990.

_____

Notary

Wherefore, plaintiffs pray for a judgment against defendants jointly and/or severally as follows:

(1) (A) Judgment against PLB for fair market value of 736 Highland Ave. immediately prior to the wrongful and forcible entry on July 19, 1978. (47,000.00 less 6,800.00 mortgage owed to PLB) $40,000.00 plus interest.

(B) Judgment against PLB for reasonable value of the use and occupancy of 736 Highland Ave. $500.00 a month from July 18, 1978 until October 18, 1990) $73,000.00 plus interest.

(C) Judgment against PLB for reasonable value of plaintiffs' and their children's furniture, clothing and personal effects located at 736 Highland Ave. on July 19, 1978. 1978, when police officers forcible took possession of 736 Highland Ave. compensatory damages $40,000.00 plus interest.

(D) Judgment against PLB, Mr. Elfers, Mr. Condit, Mr. Slukich and the city for false arrest, false imprisonment and obstruction of Justice. Compensatory damages $20,000.00 exemplary damages $20,000.00.

(E) Judgment against Mr. Elfers, Mr. Condit, Mr. Slukich, the City, Mr. Hughes and Mr. Zalla for aiding the wrongful taking and detention of plaintiffs' home, business and personal effects. Compensatory damages $30,000.00, exemplary damages $30,000.00.

(2) (A) Judgment against PLB for fair market value of 1013-1015 Greenup immediately prior to the wrongful and forcible taking on July 19, 1978. $15,000.00 compensatory damages (35,000.00 less $20,000.00 owed PLB) plus interest.

(B) Judgment against PLB for loss of rents and profits from July 19, 1978 until October 18, 1990. (147 months @ 400.00 month) $58,000.00 plus interest.

(3) (A) Judgment against PLB and the City for fair market value of building and business equipment at 1001-1003 Greenup St., immediately prior to the wrongful and forcible taking of July 19, 1978. (36,000.00 less $13,000.00 mortgage owed PLB) $23,000.00 plus interest.

(B) Judgment against PLB and the City for loss rent and profit from July 19, 1978 until October 18, 1990. (147 months @ $300.00 month) $44,100.00 plus interest.

(4) Trial by jury.

(5) A reasonable attorney fee plus cost.

(6) Any other just and proper relief which plaintiffs may be entitled to.

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Patricia Thompson

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